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The Struggle for Civil Rights: The Need for, and Impediments to, Political Coalitions Among and Within Minority Groups

Kevin R. Johnson*

The ominous title of this conference—"Is Civil Rights Law Dead?"—is in no small part a sign of the times.¹ The last few years have seen dire setbacks in civil rights law,² including but not limited to attacks on affirmative action,³ passage of restrictionist immigration legislation⁴ and welfare reform,⁵ imposition of limits on civil rights litigation,⁶ and the creation of legal roadblocks to remedy the

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1. See John Valery White, *Foreword: Is Civil Rights Law Dead?*, 63 La. L. Rev. 609 (2003).

2. See John Valery White, *The Activist Insecurity and the Demise of Civil Rights Law*, 63 La. L. Rev. 785 (2003).

3. See *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 115 S. Ct. 2097 (1995); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 109 S. Ct. 706 (1989); *Hopwood v. State of Texas*, 78 F.3d 932, *cert. denied*, 518 U.S. 1033, 116 S. Ct. 2580 (1996); see also Girardeau A. Spann, *Proposition 209*, 47 Duke L.J. 187 (1997) (analyzing California's initiative ending consideration of race in public education and contracting programs). Narrowly-tailored race-based affirmative action was recently reaffirmed by the Supreme Court. See *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003); *Gratz v. Bollinger*, 123 S. Ct. 2411 (2003).

4. See Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104–132, 110 Stat. 1214 (1996); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104–208, 110 Stat. 3009 (1996).

5. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104–193, 110 Stat. 2260 (1996).

6. See Prison Litigation Reform Act of 1995, Pub. L. No. 104–134, 110 Stat. 1321 (1996). Congress has also imposed many restrictions on the activities of public interest organizations that obtain funding from the federal Legal Services Corporation, which made it more difficult for those organizations to protect the rights of the poor. See generally J. Dwight Yoder, Note, *Justice or Injustice for the Poor?: A Look at the Constitutionality of Congressional Restrictions on Legal Services*, 6 Wm. & Mary Bill Rts. J. 827 (1998) (analyzing restrictions).

influence of race on the criminal justice system.⁷ Since September 2001, the "war on terror" also has had significant negative civil rights impacts.⁸

The security measures taken by the federal government in response to September 11, although primarily targeting Arabs and Muslims, will likely have civil rights impacts on many minority communities for years to come.⁹ One of the most visible products of September 11, the USA PATRIOT Act, which, among other things, expanded the power of government to conduct electronic and other surveillance, clearly will have long term civil rights impacts on citizens as well as noncitizens.¹⁰ It is difficult to divine what impacts the new Department of Homeland Security will have on civil rights in the United States,¹¹ although immigration matters within the new department might well be handled with a security tilt.

In my mind, the relevant question, however, is not whether civil rights *law* is dead, but instead whether the political struggle for civil

7. See, e.g., *Illinois v. Wardlow*, 528 U.S. 119, 120 S. Ct. 673 (2000) (refusing to disturb a conviction in which police stopped defendant because individual fled upon seeing police patrol in an area known for heavy drug trafficking, despite the fact that innocent minorities might flee police out of fear for personal safety); *Whren v. United States*, 517 U.S. 806, 116 S. Ct. 1769 (1996) (holding that, even if race motivated a traffic stop, the Fourth Amendment was not violated so long as that stop was justified by probable cause of criminal conduct); *McCleskey v. Kemp*, 481 U.S. 279, 107 S. Ct. 1756 (1987) (holding that statistical evidence of racially disparate imposition of the death penalty did not justify invalidation of death penalty in an individual case). See generally Randall Kennedy, *Race, Crime, and the Law* (1997) (analyzing critically role of race in criminal law enforcement in the United States); Kathryn K. Russell, *The Color of Crime: Racial Hoaxes, White Fear, Black Protectionism, Police Harassment, and Other Macroaggressions* (1998) (same).

8. See *infra* text accompanying notes 35–36.

9. See *infra* text accompanying notes 81–88.

10. See *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act)*, Pub. L. No. 107–56, 115 Stat. 272 (2001). For part of a quickly growing body of scholarship criticizing various provisions of the Act, see David Cole, *Enemy Aliens*, 54 *Stan. L. Rev.* 953, 966–74 (2002); David Cole, *The New McCarthyism: Repeating History in the War on Terrorism*, 38 *Harv. C.R.–C.L. L. Rev.* 1 (2003); Regina Germain, *Rushing to Judgment: The Unintended Consequences of the USA PATRIOT Act for Bona Fide Refugees*, 16 *Geo. Immigr. L.J.* 505 (2002); John W. Whitehead & Steven H. Aden, *Forfeiting "Enduring Freedom" for "Homeland Security": A Constitutional Analysis of the USA PATRIOT Act and the Justice Department's Anti-Terrorism Initiatives*, 51 *Am. U. L. Rev.* 1081 (2002); Jennifer C. Evans, Comment, *Hijacking Civil Liberties: The USA PATRIOT Act of 2001*, 33 *Loy. U. Chi. L.J.* 933 (2002).

11. See *Homeland Security Act of 2002*, Pub. L. No. 107–296, 116 Stat. 2135 (2002). The Immigration & Naturalization Service was placed into the new department, with the long term impacts on immigrants and immigrant communities uncertain at this point.

rights in the United States is alive and well. Like the national economy, law has a cyclical quality to it, depending on, among many other things, the political composition of the Supreme Court. Political struggle for social justice is particularly necessary when the courts turn a deaf ear to civil rights grievances. Ultimately, the struggle for hearts and minds will determine the fate of civil rights in the United States.

For that reason, my focus on the movement for civil rights, rather than civil rights *law*, is intentional. It is important, especially for lawyers and law professors immersed in the letter of the law, to recall that civil rights law cannot be relied on exclusively—or even primarily—in the struggle to ensure respect for the rights of all Americans. As the civil rights movement of the 1960s taught, political, as well as legal means, are necessary to move us toward a more racially just nation.¹² As no less an icon than *Brown v. Board of Education*,¹³ which outlawed *de jure* segregation but left intractable *de facto* segregation in its wake, exemplifies, law and litigation alone are unlikely to bring about the desired social change. Indeed, as critical theorists have observed, resort to law may in certain circumstances reinforce racial hierarchy.¹⁴ Only sustained political struggle will allow for lasting change of the racial status quo.

Even with civil rights litigation gains in the 1960s and beyond, the status of minorities in the United States has not changed as dramatically as one might expect or hope. Segregation remains at high levels in neighborhoods and schools across the nation, with “hyper-segregation” the norm for African American and Latina/o students.¹⁵ Employment discrimination and wage disparities between

12. See Kevin R. Johnson, *Lawyering for Social Change: What's a Lawyer to Do?*, 5 Mich. J. Race & L. 201, 206–15 (1999) [hereinafter “Johnson, *Lawyering for Social Change*”]; Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 La Raza L.J. 42, 55–56 (1995) [hereinafter “Johnson, *Civil Rights and Immigration*”]. See generally Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (1991) (questioning whether social change can come about through judicial intervention); Girardeau A. Spann, *Race Against the Court* (1993) (same).

13. 347 U.S. 483, 74 S. Ct. 686 (1954). For the argument that the legal measures designed to secure integration of public schools are misplaced, see Alex M. Johnson Jr., *Bid Whist, Tonk, and United States v. Fordice: Why Integrationism Fails African-Americans Again*, 81 Cal. L. Rev. 1401 (1993).

14. See, e.g., Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 Harv. L. Rev. 1331 (1988); Alan David Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 Minn. L. Rev. 1049 (1978).

15. See John O. Calmore, *Race/ism Lost and Found: The Fair Housing Act at Thirty*, 52 U. Miami L. Rev. 1067 (1998); Nancy A. Denton, *The Role of Residential Segregation in Promoting and Maintaining Inequality in Wealth and*

minority groups and whites remain an enduring social problem that legal rules and regulations have not fully remedied.¹⁶ Employment discrimination has evolved with the racial demographics of workers in the global economy.¹⁷

As to the question whether the political struggle for civil rights in the United States is "dead," I offer an emphatic "no." Consider events just within a few months of this March 2003 symposium. Civil rights advocates and others participated in a growing anti-war movement as the United States engaged in war to topple the Iraqi government.¹⁸ Nascent political coalitions among Asian American, Latina/o, and other groups protested the treatment of Arab and Muslim noncitizens¹⁹ subject to special registration requirements imposed by the federal government as part of the "war on terror."²⁰

Property, 34 Ind. L. Rev. 1199 (2001). See generally Douglas S. Massey & Nancy A. Denton, *American Apartheid* (1993) (analyzing housing segregation in United States).

16. See Ronald Turner, *Thirty Years of Title VII's Regulatory Regime: Rights, Theories, and Realities*, 46 Ala. L. Rev. 375 (1995) (analyzing impacts of Title VII of the Civil Rights Act of 1964, the major federal employment discrimination law). See generally Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 Stan. L. Rev. 317 (1987) (analyzing the nature of unconscious racism in U.S. social life, which often goes unchecked by the law); Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 Stan. L. Rev. 1161 (1995) (contending that many incidents of modern employment discrimination are a problem of categorization, which is not adequately addressed in Title VII).

17. See Christopher David Ruiz Cameron, *How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as a Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, 85 Cal. L. Rev. 1347 (1997) (analyzing law on discrimination based on language); Ruben J. Garcia, *Across the Borders: Immigrant Status and Identity in Law and LatCrit Theory*, 55 Fla. L. Rev. 511 (2003) (arguing that immigrants deserve protection against employment discrimination under Title VII of the Civil Rights Act of 1964); Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 Yale L.J. 1329 (1991) (reviewing law concerning discrimination on the basis of non-English accent); Maria L. Ontiveros, *To Help Those Most in Need: Undocumented Workers' Rights and Remedies Under Title VII*, 20 N.Y.U. Rev. L. & Soc. Change 607 (1992-94) (studying discrimination against undocumented workers).

18. See Evelyn Nieves, *Antiwar Protesters Plan to Escalate: 'Direct Action' Seen as Next Step if War Begins*, Wash. Post, Mar. 15, 2003, at A16.

19. As Professor Wing outlines, the Arab and Muslim communities in the United States are incredibly diverse in many different respects. This diverse group, however, has been singled out by the federal government for special security measures at almost every turn since September 11, 2001. See Adrienne Katherine Wing, *Civil Rights in the Post 9-11 World: Critical Race Praxis, Coalition Building, and the War on Terrorism*, 63 La. L. Rev. 728-35 (2003); *infra* text accompanying notes 35-36, 81-88.

20. See Emily Bazar, *New Battle on Civil Rights Front*, Sacramento Bee, Jan. 20, 2003, at 1; Wyatt Buchanan, *Hundreds Protest INS Registration*, S.F.

The filibuster of the judicial nomination of Miguel Estrada, a Latino nominee prominent in conservative circles but who refused to fully share his legal views with the U.S. Senate, prevented his confirmation.²¹ Political pressure forced Trent Lott, who waxed fondly before television cameras about how the nation would have avoided its racial "problems" if it had only elected as President a candidate running on a segregationist third party ticket, to relinquish his leadership role in the U.S. Senate.²² Last but not least, a wide array of advocacy groups in early 2003 filed *amicus curiae* briefs supporting affirmative action in the University of Michigan cases²³ and rallied on the steps of the Supreme Court during oral argument in the cases to show support for affirmative action. In sum, many signs point to the vitality of the political struggle for civil rights.²⁴

Given that the courts in these times are not likely allies in the quest for racial justice, reinvigorated forms of political action should be investigated. Professor Adrien Katherine Wing's paper "Civil Rights in the Post 9-11 World: Critical Race Praxis, Coalition Building, and the War on Terrorism"²⁵ moves us forward in thinking about the struggle for civil rights in this most challenging era. Known for her influential Critical Race Theory and Critical Race Feminist scholarship,²⁶ Professor Wing brings much to analyzing the

Chronicle, Jan. 11, 2003, at A13; Chris McGann, *Protesters Accuse INS of 'Very Un-American' Registration*, Seattle Post-Intelligencer, Jan. 14, 2003, at B1; Teresa Watanabe, *Muslim Panel Riding Wave of Success*, L.A. Times, Jan. 18, 2003, at pt. 2, p. 22.

21. See Neil A. Lewis, *Estrada Filibuster Holds*, N.Y. Times, Mar. 19, 2003, at A24. For a defense of the filibuster of the nomination because of the nominee's failure to fully share his views with the U.S. Senate, see Kevin R. Johnson, *A Defense of the Estrada Filibuster: A Judicial Nominee that the Senate Cannot Judge*, at http://writ.news.findlaw.com/commentary/20030227_johnson.html (Feb. 27, 2003).

22. See Helen Dewar & Mike Allen, *Lott Resigns As Leader of Senate Republicans; Frist Expected to Be Named His Successor*, Wash. Post, Dec. 22, 2002, at A1.

23. See Charles Lane, *U-Michigan Gets Broad Support on Using Race*, The Wash. Post, Feb. 11, 2003, at A1.

24. See Greg Winter, *Thousands of Students Gather Outside Court in Support of Admission Policies*, N.Y. Times, Apr. 2, 2003, at A14; Debbi Wilgoren & Manny Fernandez, *A Defense Team of Thousands; Diverse Crowd Urges High Court to Protect Affirmative Action*, Wash. Post, Apr. 2, 2003, at B1.

25. See, Wing, *supra* note 19.

26. See, e.g., *Critical Race Feminism: A Reader* (Adrien Katherine Wing ed., 2d ed. 2003); *Global Critical Race Feminism: An International Reader* (Adrien Katherine Wing ed., 2000); Adrien Katherine Wing, *Reno v. American-Arab Anti-Discrimination Committee: A Critical Race Perspective*, 31 Colum. Hum. Rts. L. Rev. 561 (2000); Adrien Katherine Wing & Sylke Merchán, *Rape, Ethnicity, and Culture: Spirit Injury from Bosnia to Black America*, 25 Colum. Hum. Rts. L. Rev. 1 (1993).

U.S. government's responses to the tragedy of September 11 and the political opportunities created as a result.

Although the political struggle for civil rights in my view is far from dead, I very much agree with Professor Wing about the need for "a thorough reconceptualization [of civil rights] in the 21st century."²⁷ Changes over recent decades require precisely such a reconceptualization and complete redefinition of the goals of the struggle for civil rights, as well as the desired means to achieve them. The growth of the Latina/o population across the country, including the Midwest and South,²⁸ has shifted the balance of civil rights concerns, adding to longstanding ones. Asian migration, which has increased significantly since 1965, has similarly affected the civil rights agenda.²⁹ Changing racial demographics have expanded the scope of civil rights to include matters not necessarily thought of as traditional civil rights issues, such as immigration, language regulation, and even access to driver's licenses.³⁰

In addition, old issues have been recognized as having "civil rights" implications because of their impacts on minority communities. For example, the field of environmental justice, which grew from environmental law, is of relatively recent origin as activists and academics have come to appreciate the impacts of environmental hazards on communities of color.³¹ Immigration law and its

27. Wing, *supra* note 19, at 717.

28. See Bill Ong Hing, *Answering Challenges of the New Immigrant-Driven Diversity: Considering Integration Strategies*, 40 Brandeis L.J. 861, 864-68 (2002); Kevin R. Johnson, *The End of "Civil Rights" as We Know It?: Immigration and Civil Rights in the New Millennium*, 49 UCLA L. Rev. 1481, 1492-96 (2002); Sylvia R. Lazos Vargas, "Latina/o-ization" of the Midwest: *Cambio de Colores* (Change of Colors) as *Agromaquilas* Expand into the Heartland, 13 Berkeley La Raza L.J. 343 (2002). See generally Roberto Suro & Audrey Singer, *Latino Growth in Metropolitan America: Changing Patterns, New Locations* (Brookings Institution, July 2002) (analyzing emerging patterns of Latina/o population growth throughout United States).

29. See Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. Rev. 273 (1996). See generally Angelo N. Ancheta, *Race, Rights, and the Asian American Experience* (1998) (analyzing civil rights of Asian Americans in modern United States); Robert S. Chang, *Disoriented: Asian Americans, Law, and the Nation-state* (1999) (same); Frank H. Wu, *Yellow: Race in America Beyond Black and White* (2002) (same).

30. See Johnson, *supra* note 28, at 1499-1510; see, e.g., *Alexander v. Sandoval*, 532 U.S. 275, 121 S. Ct. 1511 (2001) (rejecting challenge to Alabama's English language requirement for driver's license by lawful permanent resident from Mexico).

31. See Eric K. Yamamoto & Jen-L W. Lyman, *Racializing Environmental Justice*, 72 U. Colo. L. Rev. 311 (2001). See generally Luke W. Cole & Sheila R. Foster, *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement* (2001) (summarizing growth of movement);

enforcement has increasingly been viewed as implicating civil rights concerns.³² Similarly, voting rights scholarship has focused on race and its impacts on electoral politics,³³ with even the racially disparate impacts of campaign finance reform recognized to a certain extent as a civil rights issue.³⁴

As this brief review suggests, "civil rights" are not static and fixed but dynamic and ever-changing. In this vein, the aggressive efforts of the federal government in the "war on terror" have created an entire new set of civil rights challenges,³⁵ with the Arab and Muslim communities being most directly and immediately affected. However, immigrants and citizens from a variety of backgrounds also have suffered – and will continue to suffer for the indefinite future – from the various security measures taken in the name of national security.³⁶

In analyzing the political struggle for civil rights in the United States, Professor Wing builds on two fundamental tenets of Critical Race Theory: (1) race is a social construction, a product of our collective minds rather than a biological truth;³⁷ and (2) tying critical theory to practice, which often is referred to in Critical Race Theory

Environmental Justice: Law, Policy, & Regulation (Clifford Rechtschaffen & Eileen Gauna eds., 2002) (collecting foundational readings in area).

32. See generally Kevin R. Johnson, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, 2000 U. Ill. L. Rev. 525 (calling for immigration law scholarship to focus attention on the impacts of immigration law on communities of color).

33. See, e.g., Lani Guinier, *The Tyranny of the Majority: Fundamental Fairness in Representative Democracy* (1994); Terry Smith, *A Black Party?* Timmons, *Black Backlash and the Endangered Two-Party Paradigm*, 48 Duke L.J. 1 (1998).

34. See Spencer Overton, *Voices from the Past: Race, Privilege, and Campaign Finance*, 79 N.C. L. Rev. 1541 (2001).

35. See Susan M. Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. Ann. Survey Am. L. 295 (2002); Sameer M. Ashar, *Immigration Enforcement and Subordination: The Consequences of Racial Profiling After September 11*, 34 Conn. L. Rev. 1185 (2001–02); Bill Ong Hing, *Vigilante Racism: The De-Americanization of Immigrant America*, 7 Mich. J. Race & L. 441 (2002); Thomas W. Joo, *Presumed Disloyal: Executive Power, Judicial Deference, and the Construction of Race Before and After September 11*, 34 Colum. Hum. Rts. L. Rev. 1 (2002); Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. Rev. 1575 (2002).

36. See Kevin R. Johnson, *September 11 and Mexican Immigrants: Collateral Damage Comes Home*, 49 DePaul L. Rev. 849 (2003) (documenting impacts of various security measures on Mexican immigrant community).

37. See generally Michael Omi & Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s* (2d ed. 1994) (analyzing social construction of race in United States); Christine B. Hickman, *The Devil and the One Drop Rule: Racial Categories, African Americans, and the U.S. Census*, 95 Mich. L. Rev. 1161 (1997) (studying impacts of "one drop" of blood rule for definition of African American identity in United States).

parlance as "critical race praxis."³⁸ Both Critical Race Theory teachings shed much light on the civil rights controversies of the times in which we live, thus demonstrating Critical Race Theory's theoretical and practical utility.

As has occurred in different forms with other minority groups, society has racialized and demonized Arabs and Muslims as, among other things, religious fanatics bent on terrorism.³⁹ This racialization, evident in a diverse array of sources ranging from popular culture to special legal rules and regulations, including "secret evidence" hearings in which the government denied Arab and Muslim noncitizens the evidence allegedly justifying their deportation, existed long before September 11.⁴⁰ The events of that day, however, strongly reinforced the negative stereotypes already in place and facilitated the nation's aggressive actions toward Arabs and Muslims.⁴¹

In hopes of tying theory to practice, Professor Wing advocates political coalitions among racialized communities to combat old and new forms of discrimination and civil rights deprivations.⁴² Such coalitions, she contends, are necessary to the political struggle for civil rights in the post-September 11 era. This essay focuses on this aspect of Professor Wing's article and analyzes the efficacy of multiracial coalitions in the political struggle for civil rights.

Part I of this essay argues that, despite the growing minority population in the United States, coalitions between communities of color will be necessary to displace white domination of the electoral process in this country. Part II addresses two formidable barriers to coalitions of color, both racism within minority communities toward other minority communities and intra-minority group tensions. These issues, often avoided because of their sensitivity, must be addressed if the hopes of creating multiracial coalitions are to be fully realized.

38. See, e.g., Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 Mich. L. Rev. 821 (1997). For commentary on Professor Yamamoto's formulation of critical race praxis, see Keith Aoki & Margaret Chon, *Nanook of the Nomos: A Symposium on Critical Race Praxis*, 5 Mich. J. Race & L. 35 (1999). See generally Richard Delgado & Jean Stefancic, *Critical Race Theory: An Introduction* (2001) (summarizing fundamental tenets of Critical Race Theory).

39. See Wing, *supra* note 19, at 723, 735; Natsu Taylor Saito, *Symbolism Under Siege: Japanese American Redress and the "Racing" of Arab Americans as "Terrorists"*, 8 Asian L.J. 1, 11-26 (2001).

40. See Akram & Johnson, *supra* note 35, at 301-27.

41. See *id.* at 327-45; Wing, *supra* note 19, at 727. Professor Wing further points out that the negative impacts of the civil rights deprivations resulting from the security measures imposed on Arab and Muslim men will indirectly impact Arab and Muslim women. See *id.* at 730-35.

42. See *supra* note 19, at 739-757.

I. THE NEED FOR POLITICAL COALITIONS BETWEEN RACIAL MINORITIES

In recent works, prominent commentators, such as Lani Guinier, Gerald Torres, Robert Williams, and Eric Yamamoto,⁴³ have expressed optimism about the potential for multiracial coalitions. Coalition is a fundamental tenet of the growing body of critical Latina/o theory scholarship.⁴⁴ This is a politically pragmatic approach based on the old maxim that "there is power in numbers." Others, including Richard Delgado and Haunani-Kay Trask,⁴⁵ are more pessimistic. Fears of coalitions run the gamut from diluting a group's particular message and goals to co-optation, with the bottom line being that the costs of collective action outweigh any benefits.

In my estimation, coalitions are necessary to fully understand and attack racial hierarchy and white supremacy in the United States.⁴⁶

43. See Lani Guinier & Gerald Torres, *The Miner's Canary: Enlisting Race, Resisting Power, Transforming Democracy* (2002); Eric K. Yamamoto, *Interracial Justice: Conflict and Reconciliation in Post Civil Rights America* (1999); Robert A. Williams, Jr., *Linking Arms Together: Multicultural Constitutionalism in a North American Indigenous Vision of Law and Peace*, 82 Cal. L. Rev. 981 (1994); see also William Julius Wilson, *The Bridge Over the Racial Divide: Rising Inequality and Coalition Politics* (1999) (analyzing potential for political coalitions among racial minorities).

44. See Francisco Valdes, *Foreword: Under Construction—LatCrit Consciousness, Community, and Theory*, 85 Cal. L. Rev. 1087, 1094 (1997) (outlining basic precepts of of LatCrit theory).

45. See Richard Delgado, *Linking Arms: Recent Books on Interracial Coalition as an Avenue of Social Reform*, 88 Cornell L. Rev. 855 (2003) (book review); Haunani-Kay Trask, *Coalition-Building Between Natives and Non-Natives*, 43 Stan. L. Rev. 1197 (1991); see also Stokely Carmichael & Charles V. Hamilton, *Black Power: The Politics of Liberation in America* 58–84 (1967) (questioning efficacy of African American/white coalitions in movement for social change).

46. See Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. Miami L. Rev. 1177, 1178 (1999) ("[T]he problems of building coalitions and developing political agendas bring us face-to-face with the reality that different racial and ethnic groups have distinct histories and interests, some of which collide."); Mary Romero, *Afterword: Historicizing and Symbolizing a Racial Ethnic Identity: Lessons for Coalition Building with a Social Justice Agenda*, 33 U.C. Davis L. Rev. 1599, 1599 (2000) ("Although groups centering on discrete identities struggled to find a rallying point from which to advocate social justice and coalition building, this has proven to be a difficult project."); Enid Trucios-Haynes, *The Legacy of Racially Restrictive Immigration Laws and Policies and the Construction of the American National Identity*, 76 Or. L. Rev. 369, 374 (1997) ("Alliances within and among communities of color require an understanding of the situated position of noncitizens of color within this racial hierarchy. Therefore, the hierarchies of race and oppression must be overcome to form effective intra-group and inter-group coalitions.").

Racism against minority groups is related in direct and indirect ways.⁴⁷ Indeed, the relationships of many different sorts of subordinations give rise to the potential for coalition.⁴⁸ Coalitions between diverse communities, however, require much care and attention. As Angela Harris has emphasized, "solidarity is the product of struggle, not wishful thinking; and struggle means not only political struggle, but moral and ethical struggle as well."⁴⁹

The popular press has paid much attention to the future population projections showing that minorities will comprise a majority of the nation's population later this century.⁵⁰ Even with the changing demographics, political coalitions between minority groups will remain important. Alliances between and among minority groups are essential, even in parts of the United States where minorities comprise a high proportion of the population. For example, although the demographics of California, perhaps the most diverse state with one of the highest concentrations of minorities in the country, are rapidly changing, that does not necessarily translate into changing electoral outcomes.

Voter eligibility and low turnout remain significant issues for African Americans, Latina/os, and Asian Americans. Voter turnout traditionally has been lower among minority communities than white communities.⁵¹

47. See Elizabeth M. Iglesias, *Foreword: Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community*, 53 U. Miami L. Rev. 575, 595, 622-29 (1999); George A. Martinez, *African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition*, 19 Chicano-Latino L. Rev. 213 (1998); Mutua, *supra* note 46, at 1202-15; Francisco Valdes, *Piercing Webs of Power: Identity, Resistance, and Hope in LatCrit Theory and Praxis*, 33 U.C. Davis L. Rev. 897, 897-98 (2000); see also Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 Stan. L. Rev. 1183 (1991) (analyzing importance of multiracial coalitions because of the interrelationships between all subordinations).

48. See Matsuda, *supra* note 47, at 1188-91.

49. Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 Cal. L. Rev. 741, 784 (1994); see Charles R. Lawrence III, *Foreword: Race, Multiculturalism, and the Jurisprudence of Transformation*, 47 Stan. L. Rev. 819, 828 (1995) ("The hardest work to be done in the struggle against white supremacy must be done within and among communities of color.").

50. See, e.g., Lynette Clemetson, *Hispanics Now Largest Minority, Census Shows*, N.Y. Times, Jan. 22, 2003, at A1. Jim Yardley, *Non-Hispanic Whites May Soon Be a Minority in Texas*, N.Y. Times, Mar. 25, 2001, at § 1, p. 22.

51. See Arman Derfner, *Racial Discrimination and the Right to Vote*, 26 Vand. L. Rev. 523 (1973) (analyzing barriers to African American voting participation); Rodolfo O. de la Garza & Louis deSipio, *Save the Baby, Change the Bathwater, and Scrub the Tub: Latino Electoral Participation After Seventeen Years of Voting Rights Act Coverage*, 71 Tex. L. Rev. 1479 (1993) (analyzing Latina/o political participation after passage of the Voting Rights Act). See generally Lani Guinier, *Tyranny of the Majority: Fundamental Fairness in Representative Democracy* (1994) (proposing variety of ways to improve representation of minority groups in electoral politics).

Intimidation and discouragement of minorities from voting at times continue to occur.⁵²

Importantly, a significant number of Latina/os and Asian Americans in California and other states are immigrants who, as noncitizens, are not eligible to vote.⁵³ Some academics have embraced extension of the franchise to lawful immigrants.⁵⁴ That, however, has not been seriously advocated in the political arena for decades. The result is that part of the greater community—a significant part in many locales—is denied the right to vote.

The disenfranchisement of convicted felons also has significant impacts on Latina/o and African American voter eligibility because of the disparate impact of the criminal justice system on those communities.⁵⁵ Through felony disenfranchisement, the operation of the criminal justice system effectively diminishes the electoral power of African Americans and Latina/os.⁵⁶ Consequently, race-based law enforcement, which has been the subject of sustained attack in recent years,⁵⁷ is a voting rights as well as a criminal justice issue.

52. See, e.g., Symposium, *Constructive Disenfranchisement: The Problems of Access & Ambiguity Facing the American Voter*, 11 Temp. Pol. & Civ. Rts. L. Rev. 299 (2002).

53. See generally Jack Citrin & Benjamin Highton, *How Race, Ethnicity, and Immigration Shape the California Electorate* (2002) (analyzing reasons for relatively low minority proportion of electorate in light of their proportion of California population).

54. See, e.g., Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. Pa. L. Rev. 1391 (1993); Gerald M. Rosberg, *Aliens and Equal Protection: Why Not the Right to Vote?*, 75 Mich. L. Rev. 1092 (1977).

55. See John O. Calmore, *Race-Conscious Voting Rights and the New Demography in a Multiracing America*, 79 N.C. L. Rev. 1253, 1277–80 (2001); see also Afi S. Johnson-Parris, Note, *Felon Disenfranchisement: The Unconscionable Social Contract Breached*, 89 Va. L. Rev. 109 (2003) (criticizing reasons offered for disenfranchisement of felons by states).

56. See, e.g., *Hunter v. Underwood*, 471 U.S. 222, 105 S. Ct. 1916 (1985) (holding that Alabama law disenfranchising persons convicted of crimes was adopted with intent of discriminating against African Americans and thus violated the Equal Protection Clause of the Fourteenth Amendment); George P. Fletcher, *Disenfranchisement as Punishment: Reflections on the Racial Uses of Infamia*, 46 UCLA L. Rev. 1895, 1900 (1999) (“The impact of [felony] disenfranchisement is felt primarily in the black community Fourteen percent of African-American men are ineligible to vote because of criminal convictions. In seven states, one in four black men are permanently barred from voting because of their criminal records.”) (footnotes omitted); *Developments in the Law: The Law of Prisons*, 115 Harv. L. Rev. 1939, 1945 (2002) (“Florida has disqualified 31.2% of its black voting-age population – the second highest rate in the nation [Alabama’s rate was 31.5%]” based on felony convictions.) (footnote omitted).

57. See, e.g., Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 Yale L.J. 677, 695–96 (1995); Angela J. Davis, *Race, Cops, and Traffic Stops*, 51 U. Miami L. Rev. 425, 431–32 (1997); David A.

Victor Valle and Rodolfo Torres discuss the formidable impediments to the exercise of political power by Latina/os in Los Angeles, which they dub the "Latino Metropolis," despite their growing numbers.⁵⁸ Latina/os failed to elect a progressive Latino for mayor in 2002 and not until the 1990s was a Latina/o elected to the powerful Los Angeles County Board of Supervisors.⁵⁹ Los Angeles did not have a Latina/o mayor the entire twentieth century and elected a Latina to the Los Angeles County Board of Supervisors only after successful voting rights litigation in 1990.⁶⁰

A recent study demonstrates the need for coalition between minorities in racially-diverse California:

*By 2040, whites are projected to be little more than one-third of the adult population of California. However, if the citizenship and [voter] turnout rates of Asians and Latinos remain at their 2000 levels, whites will still make up a majority (53 percent) of the voting population.*⁶¹

Thus, in light of the limits on minority electoral power even with increasing numbers, coalitions among minority communities will be essential if the hope of destabilizing white privilege is to be realized.⁶²

Harris, *The Stories, the Statistics, and the Law: Why "Driving While Black" Matters*, 84 Minn. L. Rev. 265, 275-88 (1999); Tracey Maclin, *Race and the Fourth Amendment*, 51 Vand. L. Rev. 333, 342-62 (1998); Cruz Reynoso, *Hispanics and the Criminal Justice System*, in *Hispanics in the United States: An Agenda for the Twenty-First Century* 277 (Pastora San Juan Cafferty & David W. Engstrom eds., 2000); Katheryn K. Russell, "Driving While Black": Corollary Phenomena and Collateral Consequences, 40 B.C. L. Rev. 717, 718-19 (1999); David A. Sklansky, *Traffic Stops, Minority Motorists, and the Future of the Fourth Amendment*, 1997 Sup. Ct. Rev. 271 (1997); Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. Rev. 956, 957 (1999).

58. See Victor M. Valle & Rodolfo D. Torres, *Latino Metropolis* 167-94 (2000).

59. See Kevin R. Johnson, *Latina/os and the Political Process: The Need for Critical Inquiry*, 81 Or. L. Rev. 917 (2002).

60. See *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990), cert. denied, 498 U.S. 1028, 111 S. Ct. 681 (1991). The court's finding that the districting scheme violated the Voting Rights Act and the U.S. Constitution was supported by the fact that "no Latino had been elected to the five-member Board since 1874, despite the fact that the population of Los Angeles County in 1990 was 37% Latino." J. Morgan Kousser, *Shaw v. Reno and the Real World of Redistricting and Representation*, 26 Rutgers L.J. 625, 707 (1995) (emphasis added). For a history of the redistricting decisions challenged in *Garza*, see J. Morgan Kousser, *Colorblind Justice: Minority Voting Rights and the Undoing of the Second Reconstruction* 69-137 (1999).

61. Citrin & Highton, *supra* note 53, at x (emphasis added).

62. For analysis of the privilege of white identity in the United States, see

The need for coalitions among minorities should not be surprising. In nations around the world, coalition governments, often, but not always, composed of different racial and ethnic groups, are a necessary fact of political life; governments and heads of state fall when coalitions crumble. This dynamic in certain respects may represent the future of the United States. With the end of Anglo numerical superiority will come the need for coalitions for progress and social justice. In fact, coalitions in all likelihood will be necessary to govern at all.

Ultimately, the demographic changes offer both opportunity and danger, for progress and retrenchment, for equality and oppression. Nothing is predetermined.

II. IMPEDIMENTS TO COALITION EFFORTS

Two issues may affect the ability of coalition formation among racial minority groups. First, a reconceptualization of an inclusive notion of "civil rights" is necessary. Times and racial demographics have changed. The conception of civil rights must as well.

Second, racism between and within minority communities must be addressed. Although far easier to sweep under the rug than to attempt to constructively address, racial divides must be bridged or any lasting efforts at political alliances are doomed.

A. The Need for the Reconceptualization of "Civil Rights" for the Twenty-First Century

Serious impediments stand in the way of multiracial coalitions. Importantly, as the nation has become increasingly multiracial over time, civil rights have become more complicated. Perhaps most important, the notion of "civil rights" as an issue pertaining to the treatment of African Americans by whites has changed as the presence of Asian Americans, Latina/os, Native Americans, and other minority groups in the United States has become increasingly evident and acknowledged.⁶³

Successful multiracial coalitions have worked in the past. For example, Asian Americans and Latina/os worked together to devise

Stephanie M. Wildman, *Privilege Revealed: How Invisible Preference Undermines America* (1996); Cheryl I. Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1709 (1993) (studying value of whiteness as property interest in U.S. society). See generally Richard Delgado & Jean Stefancic, *Critical White Studies: Looking Behind the Mirror* (1997) (analyzing formation of white identity).

63. See Deborah Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 Stan. L. Rev. 957, 973-74 (1995).

a redistricting scheme in Monterey Park, a Los Angeles suburb.⁶⁴ Affirmative action has been an issue in which multiracial coalitions have been effective.⁶⁵

Civil rights issues are changing with the times, a period of high immigration and globalization of the world economy.⁶⁶ Coalitions will need to be built around new as well as old civil rights issues.

To this end, abandonment of the traditional view that civil rights are exclusively Black/white issues mediating relations between African Americans and whites will be essential. Along these lines, different minority groups must not see civil rights as a zero-sum game. If viewed in that way, tensions will almost inevitably flare and coalitions likely will crumble. Rather, racial justice for all groups should be viewed as the common goal. Justice is not a scarce resource, but the minimum degree of respect that all communities deserve.

1. *Beyond Black and White*

One important barrier to inter-group cooperation has been the traditional understanding of civil rights matters as almost exclusively Black and white in nature and scope.⁶⁷ It is true that, as Professor Wing mentions, a case can be made for "black exceptionalism,"⁶⁸ with the brutal legacy of slavery, lynchings, and Jim Crow, all central to the shaping of the African American community as we know it today.⁶⁹ But even assuming that claim to be true, other minority

64. See Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 Cal. L. Rev. 1395, 1417-46 (1997); Leland T. Saito, *Asian Americans and Latinos in San Gabriel Valley, California: Ethnic Political Cooperation and Redistricting 1990-92*, in *Los Angeles—Struggle Toward Multiethnic Community: Asian American, African American, & Latino Perspectives* 55 (1995).

65. See *supra* text accompanying note 23.

66. For an analysis of the tensions resulting from these changes, see Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 Cal. L. Rev. 863 (1993).

67. For authorities analyzing the Black/white paradigm of civil rights, see Kevin R. Johnson, *Foreword: Celebrating LatCrit Theory: What Do We Do When the Music Stops?*, 33 U.C. Davis L. Rev. 753, 758 & nn.20-24 (2000). See generally Timothy Davis et al., *A Reader on Race, Civil Rights, and American Law: A Multiracial Approach* (2001) (analyzing civil rights from the perspective of a diversity of different races); Juan F. Perea et al., *Race and Races: Cases and Resources for a Diverse America* (2000) (same).

68. See Leslie Espinoza & Angela P. Harris, *Afterword: Embracing the Tar-Baby-LatCrit Theory and the Sticky Mess of Race*, 85 Cal. L. Rev. 1585, 1594-1605 (1997) (analyzing case for "black exceptionalism").

69. See Wing, *supra* note 19.

groups have suffered serious civil rights deprivations and continue to suffer them.

The struggle of African Americans for civil rights is the one most familiar to many Americans. The 1950s and 1960s have forever imprinted on the national psyche the courage and persistence of the efforts to desegregate the Jim Crow South, as well as the violent resistance to those efforts. Such struggles, however, were not the only ones. Chicana/os,⁷⁰ Asian Americans,⁷¹ and Native Americans⁷² have engaged in their own civil rights struggles for many years.

Most knowledgeable observers today appreciate that the struggle for civil rights is considerably more complicated than Black/white. Burgeoning bodies of scholarship analyzing Latina/o,⁷³ Asian American,⁷⁴ and Native American⁷⁵ civil rights issues have grown substantially over the last few decades.

Along with African Americans, Asian Americans, Latina/os, Native Americans, and other groups press for recognition and redress of civil rights grievances. Some of the pressing civil rights issues of these communities differ in important respects from those central to African Americans. Latina/o civil rights issues include such matters as immigration and language policy and rules.⁷⁶ Asian Americans share some similar issues.⁷⁷ A growing multiracial community also has appeared on the national scene, with the complexities of the mixed race population brought into the public consciousness by the

70. See Kevin R. Johnson & George A. Martinez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship*, 53 U. Miami L. Rev. 1143, 1144–51 (1999) (analyzing Latina/o activists' struggle for civil rights).

71. See generally Charles J. McClain, *In Search of Equality: The Chinese Struggle Against Discrimination in Nineteenth Century America* (1994) (analyzing Chinese American efforts to fight discrimination in period of virulent anti-Chinese sentiment marred by discriminatory laws and violence).

72. See Carole Goldberg, *A Law of Their Own: Native Challenges to American Law*, 25 Law & Soc. Inquiry 263 (2000) (book review essay).

73. See generally *The Latino/a Condition: A Critical Reader* (Richard Delgado & Jean Stefancic eds., 1998) (collecting foundational readings on civil rights of Latina/os in the United States).

74. See, e.g., Chang, *supra* note 29; Wu, *supra* note 29; (2002); Eric K. Yamamoto et al., *Race, Rights and Reparation: Law and the Japanese American Internment* (2001); Sumi Cho, *Redeeming Whiteness in the Shadow of Internment: Earl Warren, Brown, and a Theory of Racial Redemption*, 40 B.C. L. Rev. 73, 19 B.C. Third World L.J. 73 (1998); Matsuda, *supra* note 47, at 1183.

75. See, e.g., S. James Anaya, *Indigenous Peoples in International Law* (1996); Robert A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (1990).

76. See Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 Harv. Latino L. Rev. 101, 112–16 (1997).

77. See *supra* text accompanying note 29.

racial classification controversy surrounding Census 2000.⁷⁸ The question then becomes how to approach the complexities of the emerging civil rights concerns so that practical action can be taken.⁷⁹

At a minimum, dialogue and discussion will be required in any effort to hash out common ground on the modern conception of civil rights. Immigration has been a dividing line between minority groups at various times in U.S. history, with poor African American, and often white, workers pitted against immigrant labor.⁸⁰ Difficult issues of race and class plague the debate. Despite its difficulty, the answer is not to avoid addressing these issues, as has often been the case, but to attempt to discuss them and determine whether common ground can be identified.

As Professor Wing alludes to in her contribution to this symposium,⁸¹ the measures taken in the "war on terror" allow a ready opportunity for political coalitions among different racial minority groups pursuing a civil rights agenda. The focus on the war has been on Arab and Muslim noncitizens, who as presumed terrorists have been subject to surveillance, interviewed and interrogated, detained, required to submit to "special" registration, and have been the focal point of no less than a nationwide dragnet based on racial, national origin, and religious profiles.⁸² In the long run, however, the harms caused by the measures enforced in the war on terror will not be limited to Arabs and Muslims. Immigration reform measures will affect communities with large immigrant populations, such as Asian and Latina/o communities. The law has tightened generally on immigrants, not simply "terrorists"; many Mexican immigrants already have suffered and more will in the future, which is precisely what occurred as a result of the 1996 immigration reforms enacted by Congress in the name of fighting

78. See Susan R. Graham, *The Real World, in The Multiracial Experience: Racial Borders as the New Frontier* 37 (Maria P.P. Root ed., 1995). Compare Tanya Kateri Hernandez, "Multiracial" Discourse: Racial Classifications in an Era of Color-Blind Jurisprudence, 57 Md. L. Rev. 97 (1998) (criticizing Bureau of Census Proposal for multiracial classification), with Reginald Leamon Robinson, *The Shifting Race-Consciousness Matrix and the Multiracial Category Movement: A Critical Reply to Professor Hernandez*, 20 B.C. Third World L.J. 231 (2000) (disagreeing with Professor Hernandez). See generally *Mixed Race and the Law: A Reader* (Kevin R. Johnson ed., 2003) (collecting readings on racial mixture in the law).

79. See Sylvia R. Lazos Vargas, *The Latina/o and APIA Vote Post-2000: What Does it Mean to Move Beyond "Black and White" Politics?*, 81 Or. L. Rev. 783 (2002).

80. See Johnson, *Civil Rights and Immigration*, *supra* note 12, at 57-63.

81. See Wing, *supra* note 19.

82. See Akram & Johnson, *supra* note 35, at 327-45.

terrorism.⁸³ Moreover, *citizens* of certain national origin ancestries are likely to be affected as well.⁸⁴

Racial profiling, which appeared to be on its deathbed at the turn of the century, made a comeback as part of the "war on terror" and will likely influence law enforcement measures affecting African Americans, Latina/os, and Asian Americans, as well as Arabs and Muslims for years to come.⁸⁵ These interrelated civil rights injuries create opportunities for coalition if the different groups fully appreciate the convergence of interests. Unfortunately, the interrelationships may not always appear to be self-evident. African Americans, Asian Americans, and Latina/os at first glance may consider it irrelevant that "those" Arabs and Muslims are being profiled, detained, interrogated, and worse. However, the logic of the security measures, based on statistical probabilities that have been used by defenders of racial profiling in criminal and immigration law enforcement, likely will affect all minority groups.⁸⁶ Similar reasoning may be used to justify race-based traffic stops and immigration stops.⁸⁷

Given common ground among civil rights issues, possible coalitions exist on a variety of matters. Racial minorities share common cause, for example, in seeking to eliminate racial discrimination in the workplace, public education, and the criminal justice system, and in the pursuit of economic justice. To build coalitions, however, we must recognize that African American, Asian American, and Latina/o communities have interests that at times may diverge. Differences must be discussed candidly and honestly to discern whether coalitions are possible. The need will be to focus on the building of coalitions on specific issues.⁸⁸

83. See Johnson, *supra* note 36, at 853–55.

84. See *Hamdi v. Rumsfeld*, 296 F.3d 278 (4th Cir. 2002) (addressing claims of U.S. citizen held as "enemy combatant" by federal government and denied fundamental constitutional rights); *Padilla v. Bush*, 233 F. Supp. 2d 564 (S.D.N.Y. 2002) (same), *aff'd in part, rev'd in part*, 2003 U.S. App. LEXIS 25616 (2d Cir. Dec. 18, 2003).

85. See Johnson, *supra* note 36, at 867–70. For an argument for the need for coalitions among African Americans and Latina/os in challenging racial profiling in law enforcement, see Kevin R. Johnson, *The Case for African American and Latina/o Cooperation in Challenging Race Profiling in Law Enforcement*, 55 Fla. L. Rev. 341, 343–53 (2003); see also Martínez, *supra* note 47 (contending that African Americans and Latina/os needed to construct intellectual coalitions to fully understand and combat racism in United States). See generally Bill Piatt, *Black and Brown in America: The Case for Cooperation* (1997) (analyzing general need for political coalitions between African Americans and Latina/os).

86. See Johnson, *supra* note 36, at 867–70.

87. *Id.*

88. See Trask, *supra* note 45, at 1210.

2. *Civil Rights Is Not a Zero Sum Game*

Related to the Black/white binary view of civil rights is the view that "civil rights" is a zero-sum game, with one minority group losing when another gains.⁸⁹ When viewed in that way, tensions will inevitably result between minority groups pursuing the "scarce resource" of civil rights.

In recent years, for example, African Americans at times have felt threatened by Latina/o and Asian American electoral gains.⁹⁰ In the long run, infighting among, and fragmenting of, minority communities could result in racial minorities failing to satisfy the potential for positive civil rights reform.

In zero sum games, groups fear conflict and betrayal; in that mindset, cooperation, by definition a prerequisite for successful coalitions, is unlikely.⁹¹ Unfortunately, that is how some minorities have viewed civil rights. Not surprisingly, conflict has resulted. Consequently, the struggle for civil rights must work to both expand the conception of civil rights to comport with modern realities facing minority communities and view the struggle for civil rights not as a zero sum game, but an instance in which the civil rights of all groups can be recognized and protected.⁹²

This will not be an easy task. Many, perhaps most, of us are conditioned to view the world as one of scarce resources and inherent limits. Such constraints unquestionably exist in certain circumstances. However, we have not – nor should we – view "equality" and "racial justice" as limited resources. No one views First Amendment rights of free expression and religious freedom in that way, for example. Racial equality is no different. Rights of membership in society for all groups should not be viewed as a scarce resource to be allocated among groups.

B. Conflict Among Minorities

Coalition opportunities exist between various minority groups on certain issues. However, such possibilities need sustained commitment to cooperation rather than competition. Coalitions are fragile and require

89. For an example of this kind of thinking, see Orlando Patterson, *Race by the Numbers*, N.Y. Times, May 8, 2001, at A27 (contending that inclusion of Latina/os and other groups in affirmative action programs had resulted in diminished political support for them, to the detriment of African Americans).

90. See Mark S. Barabak, *Blacks See a Shrinking Political Role in California*, L.A. Times, May 20, 2001, at A1.

91. See Johnson, *supra* note 85, at 361 (contending that classic prisoner's dilemma offers useful insights on need for Latina/o/African American coalition in efforts to eliminate impermissible reliance on race in law enforcement).

92. Compare Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 581, 606–07 (1990) (contending that gender essentialism by white feminists perpetuates notion that improvements for women's rights is a zero sum game).

care and attention. In addition, we must begin to address a fundamental division—racial discrimination—between minority groups.

Racism within minority communities is a rarely-discussed barrier to multiracial coalitions. Anti-African American sentiment exists in the Latina/o community, just as it exists among certain segments of the Asian American community. Unfortunately, integration and assimilation of certain immigrants groups into U.S. society with whites has at times meant adoption of racist attitudes toward African Americans.⁹³ At the same time, some African Americans have embraced xenophobic views toward Latina/os and Asians.⁹⁴ Although such racism is decried, its roots and impacts have gone largely ignored. Racism within communities of color causes tension that hinders political cooperation, generates suspicion, and flares up in times of social turmoil. Those communities must squarely address such racism or take the risk that it will undermine the struggle for civil rights.

Consider an example. Los Angeles has been said to be the place for development of the progressive politics of the future, in part because the 2001 mayoral election saw a runoff between a white liberal and progressive Latino.⁹⁵ However, the mayoral race also revealed simmering tensions between African Americans and Latina/os. Campaign advertisements of the white candidate supported heavily by African Americans played on racially-charged themes directed at the Latina/o candidate, with bad blood remaining after the election.⁹⁶

Moreover, conflict *within* communities of color also exists. Latina/os, African Americans, and Asian Americans are in actuality a diverse community of communities. This is often ignored by whites who essentialize minority groups as well as by minority groups

93. See Kevin R. Johnson, "Melting Pot" or "Ring of Fire"?: Assimilation and the Mexican-American Experience, 85 Cal. L. Rev. 1259, 1274 (1997) (considering racism toward African Americans among Latina/os); Toni Morrison, *On the Backs of Blacks*, in *Arguing Immigration: The Debate over the Changing Face of America* 97 (Nicolaus Mills ed., 1994) (contending that final stage of immigrant assimilation requires adoption of racist attitudes toward African Americans); see also Viet D. Dinh, *Races, Crime, and the Law*, 111 Harv. L. Rev. 1289, 1292 (1998) (book review) ("Nonblack minorities . . . often distinguished themselves from and at times expressly denigrated blacks.").

94. See Wing, *supra* note 19, at 741-45; Tauyna Lovell Banks, *Both Edges of the Margin: Blacks and Asians in Mississippi Masala, Barriers to Coalition Building*, 5 Asian L.J. 7, 34-35 (1998). One prominent Latino intellectual views African Americans as "Anglos" guilty of the same anti-Latina/o animus as other Anglos. See *Our Next Race Question: The Uneasiness Between Blacks and Latinos*, Harper's Mag., Apr. 1996, at 55 (panel discussion of Cornel West, Earl Shorris, and Jorge Klor de Alva).

95. See Roger Keil, *Los Angeles as Metaphor: Boiling Frogs, Killer Bees, and Subversive Politics*, in *Unmasking L.A.: Third Worlds & The City* 199 (Deepak Narang Sawhney ed., 2002).

96. See Johnson, *supra* note 59, at 934.

hoping to provide a united front in hopes of maximizing their political power. Efforts to ignore these tensions, however, may well worsen them, with an eruption of discontent almost inevitable.

1. *Conflict Between Groups*

There has been much publicized interethnic conflict between minority groups, as well as with the Anglo population.⁹⁷ In the wake of the Rodney King violence of May 1992, African American and Korean American conflict grabbed the nation's attention.⁹⁸ This is true even though many of the people involved in the violence were Latina/o.⁹⁹ Thus, the violence in south central Los Angeles in May 1992 was a complex, multiracial outburst of discontent.

Conflict between minority groups has been sensationalized and arguably has been over-emphasized.¹⁰⁰ In major civil rights litigation, for example, minority activist organizations historically have cooperated.¹⁰¹ Future cooperation will require work on some major issues, such as discrimination, immigration, employment, criminal justice, and voting rights. Conflict exists, however, even if it simmers just below the surface.

To increase coalition and cooperation, minority groups will need to address racism within their communities toward other minority communities in order to form long-lasting bonds and alliances. To this point, little has been done in this regard, although few deny that racism within minority communities exists to some degree.

Given this and other divides, the future of multiracial coalitions is far from certain. Reminiscent of the Republican Party's current

97. See Hing, *supra* note 66; Walter C. Farrell, Jr. & James H. Johnson, Jr., *Minority Political Participation in the New Millennium: The New Demographics and the Voting Rights Act*, 79 N.C. L. Rev. 1215, 1219-30 (2001); Ramirez, *supra* note 63; see also Bill Ong Hing, *In the Interest of Racial Harmony: Revisiting the Lawyer's Duty to Work for the Common Good*, 47 Stan. L. Rev. 901, 909-15 (1995) (summarizing various disputes between African and Korean Americans culminating in the 1992 violence).

98. See Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed "Los Angeles,"* 66 S. Cal. L. Rev. 1581 (1993); Reginald Leamon Robinson, *"The Other Against Itself": Deconstructing the Violent Discourse Between Korean and African Americans*, 67 S. Cal. L. Rev. 15 (1993); see also Claire Jean Kim, *Bitter Fruit: The Politics of Black-Korean Conflict in New York City* (2000) (analyzing political conflict between African Americans and Korean Americans in New York City).

99. See Johnson, *Civil Rights and Immigration*, *supra* note 12, at 64-65.

100. See Johnson, *Lawyering for Social Change*, *supra* note 12, at 226-27.

101. See *id.*; see *supra* text accompanying note 23 (referring to broad-based support for affirmative action in University of Michigan case pending before the Supreme Court).

efforts to court Latina/o voters,¹⁰² whites can be expected to attempt to forge political alliances with minority groups. At times, blacks and whites have joined forces to support restrictionist immigration measures that have damaged Latina/os and Asian Americans.¹⁰³ Occasionally, Latina/os and Asian Americans have identified as "white" and sought to gain the benefits of white privilege.¹⁰⁴

In light of history and physical difference, coalitions with whites appear more likely for Latina/os than for Asian Americans and African Americans. However, Latina/os have historically been discriminated against in U.S. social life and, consequently, segments of the community have a well-developed racial consciousness.¹⁰⁵ Richard Delgado has suggested that minority groups should bargain with each other rather than try to cut the best deal with whites.¹⁰⁶

Latina/os could serve as a bridge to other groups and assist in the building of multiracial coalitions.¹⁰⁷ That may or may not come to be. Whatever the impetus, work among minority groups will be necessary to bring about change.

2. Conflict Within Groups

In addition to tensions between communities, intraethnic conflict within minority communities is an issue. Although often viewed by whites as monolithic, Asian Americans and Latina/os are extremely

102. See Michael Janofsky, *Candidates Courting Hispanic Vote*, N.Y. Times, June 25, 2000, at sec. 1, p. 14; Don Van Natta, Jr., *Republicans Open a Big Drive to Appeal to Hispanic Voters*, N.Y. Times, Jan. 15, 2000, at A12.

103. See Lawrence H. Fuchs, *The Reactions of Black Americans to Immigration*, in *Immigration Reconsidered: History, Sociology, and Politics* 293 (Virginia Yans-McLaughlin ed., 1993) (analyzing history of anti-immigrant sentiment among African Americans in United States); see also Vernon M. Briggs, *Mass Immigration and the National Interest* (1992) (contending that African American workers are injured in the job market by mass immigration); Jack Miles, *Blacks vs. Browns*, Atl. Monthly, Oct. 1992, at 67 (discussing conflict between Latina/o immigrant workers and African Americans).

104. See George A. Martinez, *The Legal Construction of Race: Mexican-Americans and Whiteness*, 2 Harv. Latino L. Rev. 321 (1997) (analyzing the historical treatment of Mexican Americans as white); Frank H. Wu, *From Black to White and Back Again*, 3 Asian L.J. 185 (1996) (same for Asian Americans).

105. See generally Rodolfo F. Acuña, *Occupied America: A History of Chicanos* (3d ed. 1987) (offering account of discrimination against Chicana/os in the United States); Tomás Almaguer, *Racial Fault Lines: The Historical Origins of White Supremacy in California* (1994) (documenting history of racial discrimination among Asian Americans, African Americans, and Latina/os in California).

106. See Richard Delgado, *Derrick Bell's Toolkit – Fit to Dismantle That Famous House*, 75 N.Y.U. L. Rev. 283, 288–306 (2000).

107. See Michael V. Hernandez, *Bridging Gibraltar: Latinos as Agents of Reconciliation in Relations Between Black and White America*, 11 La Raza L.J. 99 (1999–2000).

heterogenous populations.¹⁰⁸ National origin, class, and other differences may divide Latina/os and Asian Americans.¹⁰⁹ Similarly, class and other cleavages may divide the African American community; the burgeoning Black middle class may not share the class-based concerns of poor and working class African Americans.¹¹⁰ Consequently, efforts must be made to build coalitions within as well as among minority communities.¹¹¹

Intragroup conflict to a certain extent already has emerged in the political process. In 1992, two prominent African American politicians (Yvonne Braithwaite Burke and Diane Watson) fought a no-holds-barred campaign to become the first African American on the Los Angeles County Board of Supervisors.¹¹² One reason for the ferocity of the campaign was that "Watson [saw] herself as a genuine part of the South L.A. community [long a center of the African American community in greater Los Angeles] and Burke as a carpet-bagger."¹¹³ In 2002, a Latino Los Angeles city council candidate accused opponent Antonio Villaraigosa, a progressive Latino politician who had failed in a run for mayor, of being a "pocho," a derogatory term for a person of Mexican ancestry deemed to be too assimilated or too "white."¹¹⁴ Along these lines, the Asian American community is so heterogenous that building lasting pan-Asian political coalitions has proven difficult.¹¹⁵

108. See *infra* text accompanying notes 113–25.

109. See *id.*

110. See Jennifer L. Hochschild, *Middle-Class Blacks and the Ambiguities of Success*, in *Prejudice, Politics, and the American Dilemma* 148 (Paul M. Sniderman, Philip E. Tetlock, & Edward G. Carmines eds., 1993).

111. See Keith Aoki, *A Tale of Three Cities: Thoughts on Asian American Electoral and Political Power After 2000*, 8 UCLA Asian Pac. Am. L.J. 1, 52 (2002).

112. See Richard Simon, *Burke, Watson Step Up Attacks*, L.A. Times, Oct. 31, 1992, at B1; Richard Simon, *Burke's Ad Attacks Watson's Campaign on Tie-In to Karlin*, L.A. Times, Apr. 25, 1992, at B3.

113. Bill Boyarsky, *A County Revolution in the Making*, L.A. Times, Aug. 26, 1992, at B2.

114. See Tina Daunt, *Flier Attacking Villaraigosa Called 'Racist'*, L.A. Times, Nov. 9, 2002, at part 2, p. 1; see also Richard Marosi, *South Gate Clerk Gets Tough Lesson in Politics of South Gate*, L.A. Times (national ed.), Jan. 20, 2003, at B1 (outlining nasty political dispute among Latina/os in poor and working class suburb of Los Angeles). This episode is the latest chapter in a long history of hostility toward assimilated Latina/os by other Latina/os. See Richard Delgado, *Rodrigo's Fourteenth Chronicle: American Apocalypse*, 32 Harv. C.R.—C.L. L. Rev. 275, 299 & n.115 (1997) (stating that "pocho" is Spanish slang for person of Mexican ancestry who "has lost touch with his or her roots"). See generally Jose Villareal, *Pocho* (1959) (describing experiences of so-called pocho in United States).

115. See Bill Ong Hing, *Making and Remaking Asian America Through Immigration Policy 1850–1990*, at 171 (1993); Linda Trinh Vo, *Asian Immigrants, Asian Americans, and the Politics of Economic Mobilization in San Diego*, 22

Intra-group conflict can be seen with respect to high profile federal judicial nominations, such as conservative African American Clarence Thomas's appointment to the Supreme Court and the nomination of Honduran-born Miguel Estrada to a coveted court of appeals position.¹¹⁶ Both were opposed by some portions of their communities, which generated considerable national controversy.

Intra-Latina/o tensions erupted in *Cano v. Davis*,¹¹⁷ in which the Mexican American Legal Defense and Education Fund accused the California Legislature, with a record number of Latina/os, of diluting Latina/o voting power in violation of the Voting Rights Act¹¹⁸ in the state's congressional redistricting scheme.¹¹⁹ This visible conflict within the Mexican American community,¹²⁰ which is generally more cohesive than the greater Latina/o community, suggests the possible splintering of Latina/os along political, national origin, and other lines. In the long term, for example, one could envision a voting rights claim by Central Americans, who comprise a significant percentage of the Latina/o population in Los Angeles County,¹²¹ contending that they are being locked out of the electoral process by politicians of Mexican ancestry, who comprise the vast majority of Latina/os in state and local elected offices in California. Similar occurrences might happen among different Latina/o national origin groups in New York and Florida, which have diverse Latina/o populations like California's.

To this point, intra-community fissures within the Asian American, African American, and Latina/o communities have generally gone ignored. The fault lines are evident among Latina/os who differ socioeconomically and politically along national origin

Amerasia J. 89 (1996).

116. See John O. Calmore, Airing Dirty Laundry: Disputes Among Privileged Blacks—From Clarence Thomas to “The Law School Five,” 46 How. L.J. 175, 210–12 (2003).

117. 211 F. Supp. 2d 1208 (C.D. Cal. 2002) (granting summary judgment for defendants), *aff'd*, 537 U.S. 1100, 123 S. Ct. 851 (2003).

118. See Pub. L. No. 89–110, 79 Stat. 437 (1965) (as amended).

119. See Johnson, *supra* note 59, at 920–28.

120. Differences also exist among persons of Mexican ancestry, particularly between Mexican immigrant and established Mexican-American communities. See Kevin R. Johnson, *Immigration and Latino Identity*, 19 Chicano-Latino L. Rev. 197 (1998).

121. Central Americans constitute about 8.7 percent (over 370,000) of the Latina/o population of Los Angeles County, see: http://factfinder.census.gov/servlet/DTable?_ts63051690763, the largest concentration of Central Americans in any county in the United States, see Inter-University Program for Latino Research, Race for Hispanic Country of Origin by Regional Division and State in Census 2000 at: http://www.nd.edu/~iuplr/cic/his_orgZ_9-02/ethnic_id.html.

lines.¹²² Asian Americans also are far from a monolithic community with national origin, political, and class differences.¹²³ This is true even though Latina/os¹²⁴ and Asian Americans often face discrimination as "foreigners."¹²⁵

In sum, intra-group cooperation cannot be assumed in the multiracial politics of tomorrow. Rather, coalition within, as well as between, minority communities must be built carefully and with sensitivity. This will become an increasingly important issue in the years to come, as immigration continues to diversify the U.S. population and internal divides continue to emerge within, as well as between, minority groups.

CONCLUSION

These are difficult times in the struggle for civil rights in the United States. New challenges face minority communities across the nation. Ultimately, political struggle, as well as resort to law and the courts, will be necessary.

As has been well-documented, civil rights law has not been particularly helpful to racial minorities in recent years. Consequently,

122. See Johnson, *supra* note 93, at 1290-96.

123. See Pat K. Chew, *Asian Americans: The "Reticent" Minority and Their Paradoxes*, 36 Wm. & Mary L. Rev. 1, 25-31 (1995); see also Paul Brest & Miranda Oshige, *Affirmative Action for Whom?*, 47 Stan. L. Rev. 855, 890-96 (1995) (summarizing heterogeneity of Asian Americans). Few American-born Filipinos, one of the largest Asian national origin groups, for example, attend college or graduate school, despite representing a large proportion of the Asian American population in the United States. See Brest & Oshige, *supra*, at 893. Although generally classified as Asian, Filipinos share some commonalities with Latina/os. See Victor C. Romero, "Aren't You Latino?": *Building Bridges upon Common Misperceptions*, 33 U.C. Davis L. Rev. 837 (2000) (suggesting possible coalitions based on shared experiences of Filipinos and Latina/os).

124. See Johnson, *supra* note 76, at 117-29.

125. See generally Natsu Taylor Saito, *Alien and Non-Alien Alike: Citizenship, "Foreignness," and Racial Hierarchy in American Law*, 76 Or. L. Rev. 261 (1997) (analyzing stereotype of Asian Americans as foreigners); Keith Aoki, "Foreignness" & Asian American Identities: *Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes*, 4 Asian Pac. Am. L.J. 1 (1996) (same); Neil Gotanda, "Other Non-Whites" in *American Legal History: A Review of Justice at War*, 85 Colum. L. Rev. 1186 (1985) (making similar point). Some of the similarities in interests between Latina/os and Asian Americans may allow for collective action on certain issues. See Kevin R. Johnson, *Racial Hierarchy, Asian Americans and Latinos as "Foreigners," and Social Change: Is Law the Way to Go?*, 76 Or. L. Rev. 347, 352-58 (1997) (analyzing stereotype of Latina/os as foreigners). But see Rachel F. Moran, *What if Latinos Really Mattered in the Public Policy Debate?*, 85 Cal. L. Rev. 1315 (1997) (questioning whether Latina/o experience is analogous to Asian American and African American experiences in the United States).

the time is right to re-examine the strategies for political struggle given the demographic and other changes occurring in the United States. It is unclear, however, whether the predicates exist for the multiracial coalitions necessary for successful political action between communities of color.

To build coalitions, concerted efforts are necessary to reconceptualize civil rights for the twenty-first century in a multi-racially diverse America. The antiquated two dimensional view of civil rights must give way to a multidimensional view that comports with the modern demographics of the nation. Importantly, social justice cannot be viewed as a zero-sum game in which one minority group loses when another gains. Such an approach likely will result in tensions, barriers to coalitions, and frustration of efforts to bring about social change.

Moreover, and perhaps most importantly, we must begin to address racism within minority communities directed at other communities of color if we hope to build coalitions among those communities. Unfortunately, racism among minority communities is a social problem that thwarts collective action. Rather than condemn yet ignore it, those committed to social justice must acknowledge the problem and struggle with its solution. In the long run, this likely will prove to be a formidable challenge to the struggle for civil rights.

